HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL Nos. 1760 of 2006 and 25 of 2007

Dated: 24.12.2013

CRIMINAL APPEAL No. 1760 of 2006

Between:

Nakirikanti Nagaraju

… Appellant/A-2

And

State of A.P.,
Represented by its Public Prosecutor.

… Respondent

CRIMINAL APPEAL No. 25 of 2007

Between:

1. Nelaturi Ravi (A-1)
2. Bhourisetti Simhadri (A-3)
3. Kota Rama Mohan @ Ramanjaneyulu (A-4)

… Appellants

And

State represented by the Public Prosecutor,
High Court of A.P., Hyderabad.

… Respondent

HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL Nos. 1760 of 2006 & 25 of 2007

COMMON JUDGMENT:

Since the judgment under challenge in these appeals is one and same, both the appeals are heard together and being disposed of by this common judgment.

2. Criminal Appeal No.1760 of 2006 is preferred by A-2 and Criminal Appeal No.25 of 2007 is preferred by A-1, A-3 and A-4 challenging the judgment dated 21.12.2006 rendered in S.C.No.133 of 2006 by the Sessions Judge, Mahila Court, Vijayawada, whereby A-1 to A-4 were found guilty for the offence punishable under Section 364 IPC and they were convicted and sentenced to undergo rigorous imprisonment for a period of five years and also to pay a fine of Rs.1,000/- each, in default, to suffer simple imprisonment for a period of three months each.

3. The brief facts of the case are as follows:

PW-1 – Victim lady was kidnapped by the accused-appellants herein in an auto. She was taken forcibly and thereafter all the accused assaulted and caused injury to her. Thereafter, the accused tried to kill her. On the complaint given by PW-1, police registered a case in Crime No.272 of 2005. After completion of the investigation, police laid charge sheet for the offence punishable under Sections 364 and 307 IPC against A-1 and under Sections 364 and 307 read 34 IPC against A-2 to A-4.

4. After completion of investigation, charge sheet was

laid against the appellants herein, upon which, the learned I Additional Chief Metropolitan Magistrate, Vijayawada, took cognizance of the offences under Sections 364, 307 read with 34 IPC and committed the same to the Court of Sessions. The learned Metropolitan Sessions Judge, Vijayawada, numbered it as S.C.No.133 of 2006 and made over to the learned Sessions Judge, Mahila Court, Vijayawada, for disposal.

5. The trial Judge framed charges under Section 364 IPC against A-1 to A-4, under Section 307 IPC against A-1 and under Section 307 read with 34 IPC against A-2 to A-4 wherein they pleaded not guilty and claimed for trial. In order to prove the guilt of the accused, Prosecution got examined PWs.1 to 8 and marked Exs.P-1 to P-11. No oral or documentary evidence was adduced on behalf of the accused.

6. After carefully perusing the said oral and documentary evidence, the trial Judge convicted the accused as stated above. Challenging the same, present appeal has been preferred.

7. The learned Counsel for the appellants submitted that except the victim lady-PW-1 there is no other evidence available on record and all the witnesses turned hostile and they have not supported the case of the prosecution. The learned Counsel for the appellants pointed out that there is delay of 24 hours in lodging the complaint by the victim lady.

8. On a perusal of the material available on record, it is obvious that except the evidence of PW-1 no other evidence was available on record in support of the case of the prosecution. Now, it is to be examined as to whether the conviction of a person can be based on the sole testimony of the victim lady. According to the evidence of P.W.1, she is a married lady and she has two children. Thereafter, she lived with A-1/Appellant No.1 and gave birth to three children. While she was living with A1, she also developed illegal intimacy with one Swamy, through whom she gave birth to a child. PW-1 admitted that she filed complaints against A-1. Apart from that, PW-1 stated in her evidence that the accused assaulted her not only at one place but also in some other places by taking her in an auto. She was subjected to physical assault. PW-7, doctor, stated in his evidence that he found one abrasion over the left shoulder and contusions over the chin and right temporal region, which are simple in nature and which would be caused by a blunt object, whereas it is the case of PW-1 that she was continuously and brutally attacked by the appellants herein. If really, she was attacked brutally, necessarily she would have sustained serious injuries. The evidence of the doctor is not corroborative with that of P.W.1. Therefore, the evidence of P.W.1 appears to be far from truth. In view of the same, this Court is of the view that it is not safe to convict the appellants-accused basing on the sole testimony of P.W.1, which does not inspire confidence of this Court.

9. It is the case of the appellant that there was delay in lodging the complaint and the same is fatal to the case of the prosecution. Admittedly, there is delay in lodging the complaint. The prosecution has failed to give any explanation with regard to the said delay.

10. In the above circumstances, the conviction and sentence recorded by the trial Court against the appellants-accused are liable to be set aside.

11. In the result, criminal appeals are allowed setting aside the impugned judgment date dated 21.12.2006 rendered in S.C.No.133 of 2006 by the Sessions Judge, Mahila Court, Vijayawada. Consequently, the appellants-accused are hereby acquitted of the said charge. Fine amount, if any, shall be refunded to the appellants-accused. Bail bonds shall stand cancelled and the sureties are discharged.

12. As a sequel, miscellaneous petitions, if any, filed in this appeal shall stand closed.

RAJA ELANGO, J

24th December 2013.

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